

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ENOCH PRINGLE and DEPARTMENT OF THE NAVY,
NAVY SUPPLY SYSTEMS COMMAND, Oakland, CA

*Docket No. 97-1896; Submitted on the Record;
Issued September 20, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing greater than a 51 percent permanent impairment of the right lower extremity and a 35 percent permanent impairment to the left lower extremity for which he received a schedule award.

The Board has duly reviewed the case record and finds that appellant has no more than a 51 percent permanent impairment to his right lower extremity and a 35 percent permanent impairment to his left lower extremity.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained two work-related injuries on June 2, 1975 and March 5, 1997. The Office accepted the claims for the conditions of preexisting chronic lumbar strain/sprain and preexisting chronic degenerative arthritis, bilateral knees and had authorized bilateral meniscectomies as being work related. Appellant also received a series of schedule awards throughout the 20-year period. In an August 23, 1991 decision, the Office granted appellant an additional 2 percent impairment to the right lower extremity and an additional 5 percent impairment to the left lower extremity, bringing the total amount awarded to 51 percent right lower extremity impairment and a 35 percent impairment of the left lower extremity.

In a form report, CA1303-1193, dated August 9, 1995, Dr. Tipkins Hood, a Board-certified orthopedic surgeon and appellant's treating physician, indicated that appellant had reached maximum medical improvement on June 27, 1995. He indicated that appellant had an average range of active flexion of 60 degrees and retained an extension of 110 degrees. No ankylosis was present, but Dr. Hood indicated that a prosthesis will be required in the future. He also indicated an additional impairment of 60 percent of the lower extremities for atrophy, weakness, pain and discomfort. Dr. Hood recommended an 80 percent impairment of the lower extremity, bilateral knees.

Dr. Leonard A. Simpson, an orthopedic surgeon and an Office referral physician, reviewed the case record to render a second opinion evaluation. The Office had requested that he calculate an award for the permanent functional loss of both lower extremities. In a report dated January 17, 1996, Dr. Simpson noted that he had rendered prior reports in reference to this case on August 4, 1986, February 8, 1988 and July 1, 1991.¹ Dr. Simpson indicated that he reviewed the most recent form medical report, CA1303-1193 and stated that he was not able to make much sense of the report stating that it lumps together the evaluation of pain, atrophy and weakness so that each cannot be graded. Also, Dr. Simpson stated that the range of motion does not make sense as rather recent medical reports refer to full extension of 0 degrees and thus the value of 110 degrees of extension makes little sense. He stated that based on the current edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) Table 64 page 85 would assign less of an award for meniscectomy than prior editions. Dr. Simpson also noted that when a value is utilized in either Table 64 or Table 62, there is no additional value for loss due to pain and values for loss of motion and values for atrophy or weakness may be combined with this. Thus, he stated that if an award was calculated based on the information contained in this current file, the awards for each lower extremity would actually be lower than the prior awards of 51 percent for the right lower extremity and 35 percent impairment for the left lower extremity. Utilizing Table 62, page 83, he noted that under the A.M.A., *Guides*, a 1 millimeter cartilage interval of the knee results in a 25 percent impairment to the leg and that a 0 millimeter cartilage interval of the knee results in a 50 percent impairment to the leg. Dr. Simpson noted that no additional award would be combined with this for the meniscectomy or the loss of motion or atrophy or pain. Thus, the highest award appellant would have would be 50 percent, which is less than the 51 percent previously calculated for the right lower extremity. He noted, however, that the highest award for the left lower extremity calculated was 35 percent and there may be, based on additional information, a higher award if the cartilage interval was less than 1 millimeter. Thus, Dr. Simpson recommended a standing AP x-ray of both knees with a reading to determine the cartilage interval.

In a March 11, 1996 medical report, Dr. Fred Blackwell, appellant's treating physician and a Board-certified orthopedist, stated that standing AP x-rays of both knees were obtained and that they show more than one millimeter of cartilage interval preserved.

In a medical report dated May 2, 1996, the Office medical adviser reviewed Dr. Simpson's report and the report of the x-rays finding the interval cartilage greater than one millimeter. He stated that the maximum percentage impairment based on the total medial meniscectomy of 7 percent and arthritis (2 millimeter interval) was a 20 percent lower extremity impairment. Utilizing the Combined Values Chart of the A.M.A., *Guides*, he stated that this would result in a 26 percent award, which was less than the 35 percent schedule award already received. Thus, he stated no additional schedule award was indicated.

¹ In his August 4, 1986 report, Dr. Simpson indicated he recommended a 49 percent impairment of the right lower extremity and a 26 percent of the left lower extremity. In his February 8, 1988 report, he indicated that he recommended a 30 percent impairment of the left lower extremity. In his third report of July 1, 1991, he indicated that he recommended a 51 percent right lower extremity impairment and a 35 percent impairment of the left lower extremity. The basis of his recommendations for the percentage impairment for each extremity was set forth in detail.

The schedule award provisions of the Federal Employees' Compensation Act provide for compensation to employees sustaining impairment from loss, or loss of use, of specified members of the body.² The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.³ For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides*, has been adopted by the Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁴

In the present case, Dr. Simpson, the Office referral physician, stated that based on the medical evidence of file, the highest award appellant would have would be 50 percent based on a 0 millimeter cartilage interval, which was less than the 51 percent previously calculated for the right lower extremity. He additionally stated the highest award for the left lower extremity calculated was 35 percent and a higher award may be obtained if the cartilage interval was less than 1 millimeter.⁵ Following the receipt of Dr. Simpson's report, the Office requested that appellant undergo standing AP x-rays of both knees to determine the cartilage interval. Upon receipt of the x-ray results, the Office referred the case to an Office medical adviser for review of the medical evidence and an opinion as to the degree of permanent impairment for appellant's left lower extremity. Based on the description of appellant's impairment provided by Dr. Simpson, the medical adviser utilized Table 64, page 85 to find a 7 percent impairment for a total medial meniscectomy and utilized Table 62, page 83 to find a 20 percent impairment of arthritis as the x-rays revealed more than a one millimeter cartilage interval. Utilizing the combined values chart on page 322, the medical adviser noted that the result was a 26 percent left lower extremity impairment, which was less than the 35 percent schedule award already received.

It is appellant's burden to submit sufficient evidence to establish his claim.⁶ As Dr. Simpson found that the medical evidence of record did not establish that appellant has more than a 50 percent award based on a 0 millimeter cartilage interval, which subsequent x-rays revealed appellant had greater than a 1 millimeter cartilage interval, the Office properly determined that no additional schedule award could be granted for appellant's right lower extremity as his current impairment under the A.M.A., *Guides* was less than his previous award of a 51 percent impairment to the right lower extremity. Likewise, the medical adviser correctly noted that a two millimeter cartilage interval of the knee resulted in a 20 percent impairment plus the 7 percent impairment for a total medial meniscectomy resulted in a total of a 26 percent permanent impairment of the left lower extremity. As appellant was previously awarded a 35

² 5 U.S.C. § 8107.

³ *Danniel C. Goings*, 37 ECAB 781 (1986).

⁴ *Luis Chapa, Jr.*, 41 ECAB 159 (1989).

⁵ A.M.A., *Guides*, 83, Table 62.

⁶ *Luis Chapa, Jr.*, *supra* note 4.

percent impairment to the left lower extremity, the Office properly determined that no additional schedule award could be granted.

Accordingly, the Board finds that the May 3, 1996 decision, finding that appellant was not entitled to an additional schedule award was properly issued as the current A.M.A., *Guides* would have resulted in a percentage of impairment of both lower extremities less than what was previously awarded.

The decision of the Office of Workers' Compensation Programs dated May 3, 1996 is affirmed.

Dated, Washington, D.C.
September 20, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member